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Attorneys for Defendant
Mr. Murray

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Case No. 2:93cr262-JAM
Plaintiff,) STIPULATION AND ORDER TO MODIFY
) SUPERVISED RELEASE
vs.)
) Date
MARK LEE MURRAY,) Time
Defendant.) Judge: Hon. John A. Mendez
_____)

IT IS HEREBY STIPULATED and agreed by and between United States Attorney Phillip A. Talbert, through Assistant United States Attorney Aaron Pennekamp, counsel for Plaintiff, and Federal Defender Heather Williams, through Assistant Federal Defender Hootan Baigmoahammadi, counsel for Mark Lee Murray, that Mr. Murray's total term of supervised release be modified from consecutive to concurrent terms.

The parties specifically stipulate as follows:

1. Mr. Murray was sentenced by the Honorable David F. Levi on March 2, 1994 for count I, carjacking; count II, felon in possession of a firearm; and count III, use of a firearm during a crime of violence. Exhibit A, *Judgment*, at 1. The Court imposed 144 months of total custody; and 24 months of supervised release concurrent for counts I and II and 24 months consecutive for count III for a total of 48 months of supervised release. *Id.* at 3.

2. Mr. Murray's supervised release term is expected to begin November 27, 2023. *See e.g.*, ECF no. 74.
3. The Court may modify a term of supervised release after considering the factors set forth in § 3553(a)(1), (a)(2)(b), (a)(2)(c), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7) without a hearing if:
 - a. the relief sought is favorable to the defendant and does not extend the term of supervised release; and
 - b. the government has received notice of the relief sought, has had a reasonable opportunity to object, and has chosen not to do so. 18 U.S.C. § 3583(e)(2); Fed R. Crim. Proc. 32.1(c)(2)(B)-(C).
4. In May 2022, United States Probation contacted the undersigned assistant federal defender and assistant United States attorney and requested that we assist in modifying Mr. Murray's supervised release terms from consecutive to concurrent because of a retroactive clarification of the law.
5. Mr. Murray requests that the Court modify his terms of supervised release pursuant to the relevant §3553(a) factors for the following reasons.
 - a. Seven months after Mr. Murray was sentenced, effective November 1, 1994, the Sentencing Commission amended the guidelines to mandate that all supervised release terms run concurrently. U.S.S.G. § 5G1.2, cmt. n.2(C), amend. 507.¹
 - b. *United States v. Sanders* held that amendment 507 was a clarifying one that must be applied retroactively. 67 F.3d 855, 857 (9th Cir. 1995).
 - c. In other words, both the Commission and Ninth Circuit have recognized that running multiple terms of supervised release concurrently comports with the relevant 3553 factors.

¹ <https://www.ussc.gov/guidelines/amendment/507> (accessed September 22, 2023).

1 d. Mr. Murray therefore proffers that running his supervised release terms
2 concurrently for a total term of supervised release of 24 months is most consistent
3 with the relevant 3553 factors.

4 6. The government has had a reasonable opportunity to review Mr. Murray's request and
5 does not object.

7 Respectfully submitted,

8 HEATHER E. WILLIAMS
9 Federal Defender

10 Date: September 25, 2023

/s/ Hootan Baigmohammadi
HOOTAN BAIGMOHAMMADI
Assistant Federal Defender
Attorneys for Defendant
Mr. Murray

13
14 Date: September 25, 2023

PHILLIP A. TALBERT
United States Attorney

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16 /s/ Aaron Pennekamp
AARON PENNEKAMP
Assistant United States Attorney
Attorneys for Plaintiff

ORDER

The Court, having received and considered the parties' stipulation, and having considered the sentencing factors set forth in § 3553(a)(1), (a)(2)(b), (a)(2)(c), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7), hereby **MODIFIES** the terms of the defendant's supervised release pursuant to 18 U.S.C. § 3482(e)(2) as follows: The 24-month terms of supervised release previously imposed for Counts I, II, and III shall run **CONCURRENTLY**, for a total term of supervised release of 24 months. All other previously imposed terms of supervised release are to remain in full force and effect.

IT IS SO ORDERED.

Dated: September 28, 2023

/s/ John A. Mendez

THE HONORABLE JOHN A. MENDEZ
SENIOR UNITED STATES DISTRICT JUDGE